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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Peter Mills

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EXAMINER

KRUER, KEVIN R

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/519,994	<b>Applicant(s)</b> MILLS ET AL.	
	<b>Examiner</b> KEVIN R. KRUER	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 34-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. The rejection of claim 24 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is moot in view of the cancellation of claim 24. It is noted that embodiments d, f, and g were disclosed in original claim 7.
3. Claims 37, 38, and 40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support for the recited blends of i-iii and the components additionally recited in claims 37, 38, and 40.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. The rejection of claims 18-33 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is moot in view of the cancellation of said claims. A similar rejection has not been applied to the newly added claims because they recited temperature and frequency.

Art Unit: 1794

6. Claim 39 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 34 recites that the copolymers are bipolymers. Thus, it is unclear how the random copolymers may "comprise" additional monomeric components.

***.Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 34-36 and 38-47 are rejected under 35 U.S.C. 102(b) as being anticipated by WO99/62987 (Taniguchi). Herein US 6,541,123 is herein relied upon as an English language equivalent of said WO document.

Taniguchi teaches a film comprising a propylene/ethylene random copolymer (col 8, lines 11+) and a non-crystalline propylene block copolymers. The random copolymer preferably comprises ethylene in amounts of less than 30wt% (col 8, lines 10+)-which is herein understood to be sufficiently specific to read on the ethylene content of claim 36. The film has a storage modulus ( $E'$ ) of from  $5.0 \times 10^8$  dyn/cm<sup>2</sup> to  $5.0 \times 10^9$  dyn/cm<sup>2</sup> and a loss tangent of from 0.2-0.8 (col 5, lines 58+). Said loss tangent is the ratio of loss modulus to storage modulus. The examiner takes the position that the storage modulus and loss tangent are sufficient specific to anticipate the claimed dynamic loss modulus and dynamic storage modulus ranges. Furthermore, Taniguichi teaches the degree of

Art Unit: 1794

orientation may be 5-7 in the machine and traverse direction (col 11, lines 6+) when blown or up to 5 times in each direction when drawn. Since the film is compositionally and structurally identical to the claimed film, said film is understood to inherently meet the claimed dynamic loss modulus and dynamic storage modulus limitations.

With regards to claim 38, the composition may further comprise a styrenic block copolymer (abstract). In said embodiment, the propylene block copolymer is understood to read on the claimed propylene component.

With regards to claim 40, the propylene block copolymer is understood to read on claimed component (d).

With regards to claim 41, the examiner takes notice that the storage modulus and loss modulus of a non-oriented or a balanced film is plane-isotropic (see US 4,942,087).

With regards to claims 42-45, said film is used for stretch packaging which the examiner understands to read on the claimed label and graphic art display embodiments since such packaging is typically used as labels. With regards to claim 44, the examiner takes the position that any article is inherently squeezable to some extent.

The examiner notes the moduli are measured at a different frequency and temperature. But the examiner takes the position that the claimed moduli are inherent to the film of Taniguchi since the film is compositionally and structurally identical to the claimed film.

***Response to Arguments***

Applicant's arguments filed February 2009 have been fully considered but they are not persuasive.

Applicant argues the composition is not the only significant feature with regards to the claimed modulus and that the draw ratios are also important in obtaining said properties. Said argument is noted but fails to distinguish the claimed invention from the prior art because the prior art teaches the same draw ratio as applicant claims (see column 11 of Taniguchi).

Applicant further argues the claimed moduli are important characteristics of the film with regards to its suitability for label applications in a squeezable type environment. Said argument is noted but is not persuasive since said features are understood to be inherent to the film of the prior art.

Applicant further argues the films of Taniguchi have a much lower modulus compared to the present film. In particular, applicant points to example 7 of Taniguchi. Applicant acknowledges the DMTA conditions are different from those of the present invention but argues the skilled artisan would know a film tested at the prior art conditions would be expected to lower modulus when tested at the claimed conditions. Said argument is noted but is not persuasive because counsel's argument cannot take the place of evidence. There is no evidence cited to support applicant's allegations. Furthermore, example 7 is not the closest prior art. The closest prior art comprises a random propylene/ethylene copolymer as component (C) and is oriented 5 to 7 times in the both directions.

For the reasons noted above, the rejection is maintained.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN R. KRUEER whose telephone number is (571)272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin R Kruer/  
Primary Examiner, Art Unit 1794